

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company; the City of Mount Olive; Staunton Township; and the State of Illinois, Department of Transportation.

Stipulated Agreement regarding improving public safety at the crossings of the Company's tracks with public highways known as Third North Street, Main Street (CH 16), Second South Street, Third South Street, Poplar Street, and Eighth South Street, all in the City of Mount Olive, and TR 457 in Staunton Township, all located in Macoupin County, Illinois, designated as crossings AAR/DOT 480 074P, milepost 444.51-WA, AAR/DOT 480 075W, milepost 444.74-WA, AAR/DOT 480 076D, milepost 444.85-WA, AAR/DOT 480 077K, milepost 444.93-WA, AAR/DOT 480 078S, milepost 445.09-WA, AAR/DOT 480 079Y, milepost 445.28-WA, and AAR/DOT 480 084V, milepost 447.13-WA, respectively.

T03-0041

ORDER

By the COMMISSION:

On February 7, 2003, March 5, 2003, March 28, 2003, April 21, 2003, and May 7, 2003, the Staff of the Illinois Commerce Commission (COMMISSION), the Illinois Department of Transportation (DEPARTMENT), Staunton Township (TOWNSHIP), the City of Mount Olive (CITY), and the Norfolk Southern Railway Company (COMPANY), respectively, executed the Stipulated Agreement No. 1033 according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for safety improvements at the crossings of the Company's track with a public highways known as Third North Street (AAR/DOT 480 074P, milepost 444.51-WA), Main Street/CH 16 (AAR/DOT 480 075W, milepost 444.74-WA), Second South Street (AAR/DOT 480 076D, milepost 444.85-WA), Third South Street (AAR/DOT 480 077K, milepost 444.93-WA), Poplar Street (AAR/DOT 480 078S, milepost 445.09-WA), and Eighth South Street (AAR/DOT 480 079Y, milepost 445.28-WA) all located in the City of Mount Olive, and TR 457 (AAR/DOT 480 084V, milepost 447.13-WA) in Staunton Township, all located in Macoupin County, Illinois. The Stipulated Agreement contains an estimate of cost to accomplish the improvements and a division of cost among the parties.

The COMMISSION, having given due consideration to the Stipulated Agreement, finds that:

- (1) The COMMISSION has jurisdiction over the parties and the subject matter of this proceeding;

- (2) The physical characteristics of the subject highway-rail grade crossings, rail and highway volumes and speeds are indicated on Exhibits A-1 through A-7 of the Stipulated Agreement appended hereto;
- (3) The parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto, should be performed;
- (4) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- (5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the use of Federal Funds from the Transportation Equity Act for the 21st Century (TEA-21) and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, the City of Mount Olive, and the Norfolk Southern Railway Company be directed to bear their respective portions of the actual cost of the proposed improvements as set forth in Section 7 of the Stipulated Agreement, appended hereto;
- (6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the COMMISSION. These sections further provide that any person who fails to comply with a COMMISSION regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the COMMISSION expects the COMPANY, CITY, and the TOWNSHIP to comply with this Order in all matters addressed herein and in a timely manner, the COMMISSION advises that any failure to comply may result in the assessment of such sanctions.
- (7) Since federal funding is being utilized for the warning device improvements and the crossing surface work at the TR 457 crossing, the appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991, should cover all the proposed improvements included in the Stipulated Agreement, which is attached hereto.
- (8) Since the CITY, TOWNSHIP, or their respective contractor crews, will perform highway approach reconstruction improvements at the subject crossings, Railroad's Protective Liability and Property Damage Liability

Insurance, and Railroad Flagging should be required for said work, as specified in Illinois Department of Transportation "Standards for Road and Bridge Construction", Section 107.

- (9) The CITY has prepared plans and preliminary estimates of cost, which are attached as Exhibits C-1 through C-4 to accomplish the proposed highway approach reconstruction improvements that it will be required to perform.
- (10) The TOWNSHIP should be required to prepare detailed drawings, estimates of cost, and any required specifications for the proposed improvements to highway approaches to the TR 457 crossing as set forth in Section 2, 7.(c) of the Stipulated Agreement for the approval of the COMMISSION and DEPARTMENT.
- (11) The CITY should be granted a variance to the requirements of 92 Illinois Administrative Code (IAC) Part 1535.204 for the Main Street crossing, and be allowed to maintain the highway approaches to the existing grades as shown on Exhibit A-2, page 2, due to right-of-way and other spatial restrictions. Complying with said requirement is not reasonable or financially feasible.
- (12) The COMPANY should close, abolish, and barricade the Third South Street crossing, remove the existing automatic flashing light signals and crossing surfaces, and erect permanent Type-3 barricades conforming to the requirements of 92 IAC 1535.701 and the Manual on Uniform Traffic Control Devices.
- (13) The COMPANY should, at the TR 457 crossing, raise the siding track to the same elevation as the main track and install two new crossing surfaces to accommodate the roadway and its usable shoulder as set forth in Section 2, 7. (b) of the Stipulated Agreement.

IT IS THEREFORE ORDERED that the terms of the Stipulated Agreement executed by the Staff of the Illinois Commerce Commission, the Illinois Department of Transportation, Staunton Township, the City of Mount Olive, and the Norfolk Southern Railway Company on February 7, 2003, March 5, 2003, March 28, 2003, April 21, 2003, and May 7, 2003 respectively, be, and they are hereby accepted and required to be met by the aforesaid parties.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, the City of Mount Olive, and Staunton Township be, and they each are hereby, required and directed to proceed immediately in performing their work as set forth in Section 2 of the

Stipulated Agreement, appended hereto and each shall complete their work within eighteen months from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 7 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that since federal funding is being utilized for the warning device improvements and the crossing surface work at the TR 457 crossing, all of such work shall be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991.

IT IS FURTHER ORDERED since the highway approach reconstruction improvements at the subject crossings will be performed by the City of Mount Olive, Staunton Township, or their respective contractor crews, Railroad's Protective Liability and Property Damage Liability Insurance, and Railroad Flagging shall be required for said work, as specified in Illinois Department of Transportation "Standards for Road and Bridge Construction", Section 107.

IT IS FURTHER ORDERED that the City of Mount Olive shall be granted a variance to the requirements of 92 IAC 1535.204 for the Main Street crossing, and be allowed to maintain the highway approaches to the existing grades as shown on Exhibit A-2, page 2, due to right-of way and other spatial restrictions. Complying with said requirement is not reasonable or financially feasible.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company close, abolish, and barricade the Third South Street grade crossing, remove the existing automatic flashing light signals and crossing surfaces, and erect permanent Type-3 barricades conforming to the requirements of 92 IAC 1535.701 and the Manual on Uniform Traffic Control Devices.

IT IS FURTHER ORDERED that all bills for expenditures for highway approach work specified in Section 2, 1.(b), 3.(b), 5.(c), 6.(b), and 7.(c) of the Stipulated Agreement, appended hereto, authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Illinois Department of Transportation, District 6, Ms. Christine Reed, District Engineer, 126 East Ash St., Springfield, Illinois 62704, ATTN: WILLIAM MARTENS (Acting Engineer of Local Roads and Streets). All other bills for expenditures authorized for reimbursement from the Grade Crossing Protection Fund pertaining to the installation of the automatic warning devices specified in Section 2, 1.(a), 2.(a), 3.(a), 5.(a), 6.(a), and 7.(a) of the Stipulated Agreement, appended hereto, or

for the new crossing surface installation specified in Section 2, 7.(b), of the Stipulated Agreement, appended hereto, shall be submitted to the Fiscal Control Unit of the Illinois Department of Transportation's Bureau of Local Roads and Streets, Illinois Department of Transportation, Central Bureau of Local Roads and Streets, 2300 South Dirksen Parkway, Springfield, Illinois 62674. The Department's main and District 6 offices shall submit a copies of all bills received to the Director of Processing and Information, Transportation Bureau of the COMMISSION. The final bill for expenditures from each party shall be clearly marked "Final Bill". In addition, authorization for reimbursement from the Grade Crossing Protection Fund for this project shall expire, and the DEPARTMENT shall de-obligate all remaining Grade Crossing Protection Fund dollars, twelve (12) months after the completion date specified in this or any Supplemental Order for this project issued by the COMMISSION.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall within sixty (60) days from the date of this Order furnish to the Illinois Department of Transportation for its approval two (2) copies of the general layout plans applying to the installation of automatic flashing light signals and gates.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid general layout plans from the railroad, furnish to the COMMISSION a statement of its approval or disapproval thereof, this for the information of the COMMISSION when considering the application herein required to be filed in accordance with Form 3 of 92 IAC 1535.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall file a Form 3 of 92 IAC 1535 of this COMMISSION for each crossing showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that Staunton Township shall, within sixty (60) days from the date of this Order, furnish to the Illinois Department of Transportation for its approval, two (2) copies of the detailed estimate and two (2) copies of the plans applying to the reconstruction of the highway approach grades.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within sixty (60) days of its receipt of the aforesaid plans and estimates from Staunton Township, furnish to the COMMISSION a statement of its approval or disapproval thereof, this for the information of the COMMISSION.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, the City of Mount Olive, and Staunton Township shall each, within ninety (90) days from the

date of this Order, submit to the Director of Processing and Information, of the COMMISSION's Transportation Bureau, the name, title, mailing address, phone number facsimile number, and electronic mail address of the Company, City, and Township employee responsible for management of this project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, the City of Mount Olive, and Staunton Township shall each file a written report with the Director of Processing and Information, of the COMMISSION's Transportation Bureau, within fifteen (15) days of the conclusion of each calendar quarter, stating the status of the billing for Grade Crossing Protection Fund reimbursement for their portion of the project and the percentage of completion of their portion of the project; if any portion of the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that the COMPANY shall submit to the Director of Processing and Information, Transportation Bureau of the COMMISSION within five (5) days of the completion of the work herein required, a United States Department of Transportation Inventory Form (#6180.71) for each crossing as a notice of said completion.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company, the City of Mount Olive, and Staunton Township be, and each is hereby required and directed to submit a written notice, to the Director of Processing and Information, Transportation Bureau of the COMMISSION, of the date the work herein required of each party has been completed. Said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the COMMISSION must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The COMMISSION will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the COMMISSION's Rail Safety Program Administrator that it is unable to complete

the project within the ordered timeframe.

IT IS FURTHER ORDERED that the COMMISSION or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the COMMISSION or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision of the COMMISSION subject to the Administrative Review Law.

By Order of the COMMISSION this 4th day of June, 2003.

*Edward C. Husley*₂

Chairman

JUDGE
SECTION CHIEF <i>MES</i>
<i>[Signature]</i> ORDERS SUPERVISOR